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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

PAT WEIR et al., Plaintiffs and Appellants, v. TRAVELERS CASUALTY AND SURETY COMPANY, Defendant and Respondent.	B198611 (Los Angeles County Super. Ct. No. BC265529)

APPEAL from a judgment and post-judgment order of the Superior Court of Los Angeles County. Wendell Mortimer, Jr., Judge. Affirmed.

Zelig & Associates and Steven L. Zelig for Plaintiffs and Appellants.

Rudloff Wood & Barrows, Marjie D. Barrows and Kathleen M. DeLaney for Defendant and Respondent.

Pat and Darlene Weir (the Weirs) appeal following the entry of summary judgment and dismissal of their action against Travelers Casualty and Surety Company (Travelers). The Weirs' lawsuit asserted claims for breach of contract and breach of the implied covenant of good faith and fair dealing. Their action arose out of an insurance claim they filed when their property was damaged in the 1994 Northridge earthquake. The Weirs also appeal the trial court's post-judgment order awarding costs to Travelers. We affirm the judgment and order.

FACTUAL AND PROCEDURAL BACKGROUND

In January 1994, the Weirs' home was damaged in the Northridge earthquake. The Weirs had a property and earthquake insurance policy with Aetna Casualty and Surety Company (Aetna), which later became Travelers.[1] The policy contained four separate coverages: (1) "Dwelling," subject to a $330,000 limit; (2) "Other Structures," with a $33,000 limit; (3) "Contents," with a $231,000 limit; and (4) "Additional Living Expenses," subject to a $99,000 limit. A 10 percent deductible applied to the first three coverages. As the policy described: "The amount of the deductible for earthquake loss to property insured under each respective coverage . . . is calculated separately for each coverage. We will pay only that part of any earthquake loss which is more than 10% of the limit of liability that is shown on you[r] declarations for each coverage."

On March 29, 1994, the Weirs submitted a notice of loss regarding the earthquake damage. Travelers responded two days later. Travelers inspected the Weirs' property in April 1994 and generated a claim estimate. Travelers estimated that damage to the "dwelling" totaled $11,181.59, which was less than the $33,000 deductible. Travelers also estimated that damage to "other structures" totaled $4,496.13, which, after the $3,300 deductible, amounted to $1,196.13. Travelers also retained an engineering firm to inspect the Weirs' property and issue a report (the Degenkolb report). The report noted

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[1] The parties appear to agree that Aetna Casualty and Surety Company was the predecessor-in-interest of Travelers. Travelers, and sometimes the Weirs, have referred to Aetna and Travelers collectively as "Travelers." We do the same.

damage such as cracks in exterior and interior finishes, soft spots in the floors, and loose masonry block walls. The report also opined that some conditions were not related to the earthquake, such as a bow in the roof, a rotated beam in the living room, and floor vibrations.

On May 24, 1994, the Travelers' claims representative spoke with the "insured," about the Degenkolb report and status of the claim.[2] The claims representative's notes documented that he questioned a portion of the engineer's assessment that damage to the Weirs' roof was not earthquake related. However, the representative also indicated that even if the earthquake had caused the damage, the necessary repairs to the roof would not "add an amount that would bring claim total to above estimate." The same day, Travelers sent the Weirs a letter repeating the original estimates and stating that the company had "completed its investigation." Travelers paid the Weirs a total of $1,196.13.

On May 25, 1994, a chimney services company also inspected the Weirs' property at Travelers' behest. On June 1, 1994, the company reported damage to the home's chimneys that included cracks and separation from the main structure. The chimney report further noted that new City of Los Angeles specifications required other modifications to the chimneys. According to the Weirs, Travelers did not provide them with a copy of the chimney report or advise them of the company's findings.

The Weirs did not contact Travelers again about their claim until June 12, 2002, when they served Travelers with the civil complaint they had filed on January 2, 2002. The operative third amended complaint asserted claims for breach of contract and breach of the implied covenant of good faith and fair dealing (bad faith claim). The complaint alleged that Travelers "lowballed" the Weirs' claim, failed to complete a thorough and sufficient investigation, hired biased consultants, and misrepresented the Weirs' rights under the policy. It asserted that the Degenkolb report was inadequate and "designed to

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[2] This conversation was reported in the Weirs' interrogatory responses, which summarized documents from the insurance claim file, including the claim representative's running notes.

justify [Travelers'] lowball estimate of Plaintiffs' claim of $11,181.59." The complaint alleged that Travelers never "adequately closed" the Weirs' 1994 claim and improperly refused to further adjust the Weirs' loss. The complaint also asserted that Travelers refused to fairly evaluate the Weirs' "[Code of Civil Procedure section] 340.9 claim," and engaged in bad faith by failing to produce a copy of the insurance policy in the litigation. According to the complaint, Travelers further acted in bad faith by filing a demurrer seeking dismissal of the complaint "based upon [the complaint's] failure to attach a copy of the policy."

Motion for Summary Judgment or Summary Adjudication

Traveler's Contentions

In August 2006, Travelers filed a motion for summary judgment or, in the alternative, summary adjudication. Travelers contended that it had investigated the Weirs' loss in 1994, hired experts to assist it in evaluating the damage, and resolved the claim in 1994. It argued that the Weirs had no evidence that their claimed damage occurred during the policy period; the Weirs had failed to comply with policy conditions before filing suit; and the suit was filed one day too late. Travelers further argued that the undisputed facts at most demonstrated a "genuine dispute" as to Travelers' coverage decision, precluding any bad faith liability. Travelers also contended that the undisputed facts provided no basis for punitive damages.

The Merrill Declaration

Travelers supported the motion with the declaration of Wendy Merrill, a technical claim specialist who investigated and evaluated the Weirs' request that Travelers "reopen their claim."[3] Merrill personally reviewed the Weirs' claim file, which she declared was maintained in the ordinary course of business. The Merrill declaration offered several attached documents: a "specimen" insurance policy, the Weirs' property loss notice, Travelers' correspondence to the Weirs confirming their claim, the Degenkolb report, the chimney company's report, and the insurance claim estimate. After describing the

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[3] This apparently referred to the Weirs' lawsuit.

Degenkolb report and chimney company findings, Merrill declared that "[b]ased on Travelers' investigation and evaluation of the initial claim, Travelers determined that the damage caused by the Northridge Earthquake to the dwelling . . . was below the deductible . . . . Travelers also determined that Northridge Earthquake damage to the 'Other Structures' (Coverage B) portion of the Policy . . . totaled $1,196.13" after the deductible was subtracted. She further stated: "Travelers paid this amount to Plaintiffs on May 1, 1994. Plaintiffs did not submit a Contents (Coverage C) or an Additional Living Expense (Coverage D) claim."[4]

The Weirs' Contentions

In their opposition, the Weirs contended Travelers had not offered any admissible evidence to support the motion.[5] They asserted that Merrill had no personal knowledge of the original claim and her declaration was therefore inadmissible and ineffective. The Weirs disputed that Travelers retained and relied upon experts in its investigation of the original claim, stressing that no one with personal knowledge of the 1994 Aetna investigation had submitted a supporting declaration. They also argued that Travelers did not adjust its estimate after receiving the Degenkolb report, and the company closed the claim before the chimney company issued its report, thereby establishing that Travelers did not rely on either report. In addition, the Weirs contended the reports were inadmissible hearsay.

In support of their opposition, the Weirs attached declarations from their counsel, an appraiser and public adjuster who inspected the property in 2005 (Michael Vaughan),

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4 The Merrill declaration also described Travelers' actions after the Weirs initiated the litigation. Merrill declared that between October 2003 and February 2004, she sent several letters to the Weirs' counsel and their public adjuster requesting that the Weirs identify any allegedly overlooked damage to their property caused by the Northridge earthquake. Merrill stated that she did not receive a response to the letters and, in March 2004, Travelers denied the Weirs' request to reopen their Northridge earthquake claim.

5 Although the Weirs' opposition was filed late, the trial court considered it.

and another appraiser and public adjuster (William Hurst). The Weirs also attached their interrogatory responses and Vaughan's estimate of the repairs the Weir property required.

The Vaughan Declaration and Estimate

Vaughan declared that he had "participated in the inspection of thousands of structures that have been damaged by the Northridge earthquake, as a consultant, a licensed public adjuster, and as an appraiser." He conducted a four-hour inspection of the Weirs' property in April 2005. Vaughan also reviewed Travelers' 1994 claim estimate and other documents. Vaughan opined that the earthquake-related damage to the Weirs' property totaled $191,906.08. He declared that Travelers' original estimate was unreasonable because it did not "reflect unit costs at the time in question," and was too limited in scope. Vaughan stated that the estimate did not include essential repair components in numerous rooms in the home.[6] He also declared that the estimate was defective because it did not address several rooms "that sustained damage and/or should have been addressed because of the concept of 'line of sight.' " Vaughan's separate estimate was a 45-page itemization of proposed work and associated costs.[7]

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[6] For example, Vaughan declared: "With regard to the dining room, the estimate did not include the following essential components: [¶] -Skim coat walls; [¶] -Wallpaper prep; [¶] -Paint window, doors and trim; [¶] -remove and reset outlet covers; [¶] -remove and reset light covers; [¶] -resecure subfloor; [¶] -replace floor covering; [¶] -mask and prep for paint; [¶] -contents manipulation; [¶] -reset window treatments." Vaughan set out similar lists of components for the other areas of the property.

[7] By way of example, the following is an excerpt from the estimate's proposed dining room repairs:

DESCRIPTION	QNTY	UNIT COST	RCV	DEPREC.	ACV
R&R Carpet - High grade	136.58 SF	3.81	520.38	0.00	520.38
R&R Carpet pad - High grade	136.58 SF	0.87	118.83	0.00	118.83
Clean concrete on the floor	136.58 SF	0.19	25.95	0.00	25.95

The Hurst Declaration and the Declaration of Weirs' Counsel

The opposition also included a declaration from William Hurst, a licensed public adjuster and president of an association of public adjusters. Hurst opined that Travelers "acted completely below the standard of care" in a number of ways. These included the manner in which Travelers closed the Weirs' claim, Travelers' failure to give the Weirs the chimney report, and the lack of any activity on the claim after May 1994. Counsel's declaration concerned Travelers' conduct after the Weirs initiated the litigation.

Objections

Both sides filed written objections to the opposing side's declarations.

The Trial Court's Ruling

In November 2006, the trial court granted Travelers' motion for summary judgment:

> "[Plaintiff's] objections to the declaration of Wendy Merrill are overruled [citation]. The declaration of Michael [Vaughan] fails to raise a triable issue of fact because when an expert's opinion is purely conclusory and unaccompanied by reasoned explanation connecting factual predicates to ultimate conclusions, the opinion has no evidentiary value. The expert opinion is worth no more than the reasons upon which it rests, and the [Vaughan] declaration is devoid of reasons [citation]. The Hurst declaration depends upon the [Vaughan] declaration and so was not considered further. Also, it was signed by the plaintiffs' attorney and not by Dr. Hurst. The moving party's evidence shows that the claim was properly adjusted and paid in 1994. Plaintiffs did not contact defendant again until this lawsuit was filed in 2002. Plaintiffs have failed to present competent evidence that the damage exceeded the deductible. Motion for Summary Judgment is granted."

The trial court denied the Weirs' motion for reconsideration of its ruling. The Weirs appealed the judgment, and later appealed the trial court's order denying their motion to tax costs.

DISCUSSION

I. Summary Judgment Was Proper

A. Standard of Review

"Summary judgment is granted when no triable issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); [citation].) After examining documents supporting a summary judgment motion in the trial court, this court independently determines their effect as a matter of law. [Citation.] The moving party bears the burden of establishing, by declarations and evidence, a complete defense to the plaintiff's actions or the absence of an essential element of plaintiff's case. [Citations.] The moving party must demonstrate that under no hypothesis is there a material factual issue requiring a trial. [Citation.] When the moving party makes that showing, the burden of proof shifts to the opposing party to show, by responsive separate statement and admissible evidence, that one or more triable issues of fact exist. [Citations.]" (*1231 Euclid Homeowners Assn. v. State Farm Fire & Casualty Co.* (2006) 135 Cal.App.4th 1008, 1017 (*1231 Euclid*).) "In resolving the motion we construe defendants' evidence strictly and plaintiffs' evidence liberally, and resolve any doubts as to the propriety of granting the motion in plaintiffs' favor as the opponent. [Citations.]" (*DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 675 (*DiCola*).)

"We review the trial court's evidentiary rulings on summary judgment for abuse of discretion. [Citations.] As the parties challenging the court's decision, it is plaintiffs' burden to establish such an abuse, which we will find only if the trial court's order exceeds the bounds of reason. [Citation.]" (*DiCola, supra,* 158 Cal.App.4th at p. 679; *Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694 (*Carnes*).)

We focus on whether there were triable issues of material fact as to whether Travelers' actions breached its contractual obligations in 1994. The Weirs had no contact with Travelers after their claim was closed in 1994 until they filed suit in 2002. Although they allege that Travelers breached its obligations by failing to spontaneously reopen their 1994 claim after Code of Civil Procedure section 340.9 became law, the courts in

this state have repeatedly rejected such arguments.[8] (*Cheviot Vista Homeowners Assn. v. State Farm Fire & Casualty Co.* (2006) 143 Cal.App.4th 1486, 1498 (*Cheviot Vista*).) Section 340.9 did not "impose on the insurer a new duty to investigate," or "impose renewed or additional duties on insurers." (*Lincoln Fountain Villas Homeowners Assn. v. State Farm Fire & Casualty Ins. Co.* (2006) 136 Cal.App.4th 999, 1006, 1009 (*Lincoln*).) Thus, we are initially concerned with Travelers' alleged violation of the insurance policy in 1994.

B. Travelers Satisfied Its Initial Burden on Summary Judgment

i. The trial court did not abuse its discretion in overruling the Weirs' objections to the Merrill declaration

The Weirs objected to much of the Merrill declaration on the grounds that she lacked personal knowledge and could not lay a foundation for the documents attached to the declaration. The Weirs also objected to the expert reports from the claim file as inadmissible hearsay. The trial court did not abuse its discretion in overruling these objections.

The Merrill declaration provided the information necessary for the trial court to consider the attached documents from the claim file as business records under Evidence Code section 1271.[9] Merrill declared that she was familiar with Travelers' "manner and

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[8] "Code of Civil Procedure section 340.9 revives certain Northridge earthquake claims for policy benefits against insurers that otherwise would be time-barred in cases in which 'an insured contacted an insurer or an insurer's representative prior to January 1, 2000, regarding potential Northridge earthquake damage' and provides a cause of action on such a claim may be commenced within one year of the statute's January 1, 2001 effective date. (Code Civ. Proc., § 340.9, subd. (a).)" (*Cheviot Vista*, *supra*, 143 Cal.App.4th at p. 1491, fn. 3.)

[9] Evidence Code section 1271 provides: "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if: [¶] (a) The writing was made in the regular course of a business; [¶] (b) The writing was made at or near the time of the act, condition, or event; [¶] (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and [¶] (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

method" of maintaining insurance claim related documents. She stated that the claim file was maintained in the ordinary course of business, that Travelers' business practice was to place all relevant claim documents in a file at or around the time the document was received or generated, and that claim representatives were under a business duty to record "significant claim handling events" by placing relevant correspondence and reports in the file at or around the time the documents were sent or received. These statements laid a foundation and established the business records hearsay exception for the attached documents from the Weirs' claim file. The trial court properly considered the documents as evidence of the steps Travelers took when adjusting the Weirs' claim in 1994. (Evid. Code, § 1271.)

The Weirs argue that the Merrill declaration failed to demonstrate sufficient personal knowledge because she did not state how long she had worked for Travelers or declare that she worked for the company when it was Aetna. This omission is not fatal. To be a "qualified witness" under Evidence Code section 1271, it was not necessary that Merrill have personal knowledge of the events recorded in the documents, only that she have knowledge of the company's record creation and maintenance practices. (*County of Sonoma v. Grant W.* (1986) 187 Cal.App.3d 1439, 1451.) While Merrill's declaration could have been more specific, we cannot find that the trial court abused its discretion in overruling the objections to the declaration on this ground.

We also note that despite the Weirs' objections, they relied upon the documents attached to the Merrill declaration in their own interrogatory responses (submitted in opposition to summary judgment), and recited the same chain of events and description of Travelers' actions. To explain the factual basis for their claims in their interrogatory responses, the Weirs repeated sections from the claim representative's running notes (Exhibit A to the Merrill declaration), the Weirs' March 29, 1994 notice of loss (Exhibit C), the March 31, 1994 letter to the Weirs confirming receipt of the notice (Exhibit D), the claim estimate printout (Exhibit G), the Degenkolb report (Exhibit E), and the chimney company report (Exhibit F). The Weirs' reliance on these same documents further demonstrates that the trial court did not abuse its discretion in

considering them to prove the occurrence or existence of an act, condition, or event recorded in the documents, as Evidence Code section 1271 permits. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1011 [trial court has broad discretion in determining whether sufficient foundation to qualify evidence as a business record]; *Carnes, supra,* 126 Cal.App.4th at p. 694.)

ii. Travelers made a prima facie case that it did not breach the insurance policy in 1994

The Merrill declaration and the attached documents from the claim file established the following. The Weirs made a claim under their property insurance policy after the Northridge earthquake. Travelers responded within two days of receiving the notice of loss. Travelers' claim representative inspected the property and generated estimates of loss. Travelers also engaged an engineering firm and chimney company, both of which inspected the property. Travelers maintained its original estimate and determined that under the dwelling coverage, the damage did not exceed the Weirs' deductible. Under the other structures coverage, the damage estimate exceeded the Weirs' deductible by $1,196.13. Travelers paid that amount. The Weirs did not contact Travelers again until they filed suit on January 2, 2002. Although the Weirs disputed the sequence of these events and objected to Merrill's recitation of them in her declaration, they did not dispute that these were Travelers' actions. In fact, as noted above, the Weirs recited the same facts in their interrogatory responses.

Travelers' evidence was sufficient to satisfy its initial burden on summary judgment to show the absence of an essential element of the Weirs' breach of contract claim, namely the absence of a breach of the policy in 1994. Based on the evidence submitted with its moving papers, Travelers did not owe the Weirs additional policy benefits. "In addition, because [Travelers] satisfied its initial burden of establishing it did not breach the insurance policy in 1994, absent evidence from [the Weirs] creating a triable issue of material fact, the bad faith cause of action necessarily falls as well. [Citations.]" (*Cheviot Vista, supra,* 143 Cal.App.4th at p. 1497.)

C. The Weirs Failed to Present Competent Evidence Creating a Triable Issue of Material Fact

Since Travelers made a sufficient prima facie showing, it was the Weirs' burden to demonstrate the existence of triable issues of material fact, by means of admissible evidence. (*Cheviot Vista, supra*, 143 Cal.App.4th at p. 1497.) The Weirs' evidence relevant to the breach of contract claim was the Vaughan declaration. Travelers objected to portions of the Vaughan declaration as irrelevant, speculative, lacking foundation, hearsay, and improper expert opinion. Travelers argued that Vaughan did not inspect the Weirs' property until several years after the loss occurred and neither had personal knowledge, nor relied upon admissible evidence, to form an opinion about whether the Weirs' claimed damages were caused by the Northridge earthquake. The trial court found the Vaughan declaration did not create a triable issue because it was an unsupported expert opinion and had "no evidentiary value." We review the evidentiary ruling for an abuse of discretion and determine de novo whether the Weirs demonstrated any triable issues of material fact.

i. The Vaughan declaration

The Weirs contend that the Vaughan declaration established triable issues of material fact as to the claim that Travelers failed to thoroughly investigate the earthquake damage in 1994, and that Travelers issued a "lowball" estimate of the damage.

"Generally, a party opposing a motion for summary judgment may use declarations by an expert to raise a triable issue of fact on an element of the case provided the requirements for admissibility are established as if the expert were testifying at trial. [Citations.]" (*Towns v. Davidson* (2007) 147 Cal.App.4th 461, 472) An expert declaration in connection with a summary judgment motion " 'is sufficient, if [it] establishes the matters relied upon in expressing the opinion, that the opinion rests on matters of a type reasonably relied upon, and the bases for the opinion. [Citation.]' [Citation.] An expert's opinion, however, 'may not be based on assumptions of fact that are without evidentiary support or based on factors that are speculative or conjectural, for then the opinion has no evidentiary value and does not assist the trier of fact. [Citation.]

Moreover, an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based. [Citations.]' [Citation.]" (*Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 123 (*Powell*).)

Here, Vaughan stated his conclusions that Travelers' original estimate of the damage to the Weirs' property was unreasonable because "[k]ey components of damages were missed, the scope was very incomplete, [and] unit costs were unrealistic." However, the declaration failed to explain these conclusions. Vaughan inspected the property in 2005. His declaration did not explain how he determined that any damage he observed in 2005 resulted from the 1994 earthquake. Although the declaration listed "components" that were not included in Travelers' original claim estimate, Vaughan did not indicate why the additional "components" were necessary. The declaration was silent on whether earthquake damage went unnoticed or ignored in 1994, or whether the components were necessary repairs based on the damage that Travelers noted and addressed in 1994. The declaration further asserted that Travelers should have addressed additional rooms of the Weirs' home that "sustained damage and/or should have been addressed because of the concept of 'line of sight.' " His estimate listed work to be done for the unaddressed areas, but did not explain what Northridge earthquake-related damage the proposed work was intended to correct. Further, the declaration asserted that Travelers did not use realistic unit costs without explaining what the proper 1994 unit costs would have been.[10]

The Weirs stress that in ruling on a summary judgment motion, the trial court must liberally construe the opposing party's evidence. This is the correct standard, but it does not require the court to consider evidence it properly deems inadmissible. (See *Powell, supra,* 151 Cal.App.4th at pp. 125-130; *Brown v. Ransweiler* (2009) 171 Cal.App.4th

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10 According to the Weirs' interrogatory responses, the Vaughan estimate is based on 2005 construction costs, not 1994 costs.

516, 529-531.) An expert declaration submitted in opposition to summary judgment need not be exhaustive, but it must be supported by reasoned explanation, rather than conclusory statements alone. The Vaughan declaration and estimate list many repair "components," but fail to indicate what *damage*, if any, was omitted from the Travelers adjustment of the claim. The declaration and estimate also do not explain whether, or how, Vaughan determined the condition of the property before the earthquake.[11] (See *1231 Euclid*, *supra*, 135 Cal.App.4th at pp. 1016-1017, fn. 13.)

We conclude the trial court did not abuse its discretion in disregarding the Vaughan declaration.

ii. The Weirs failed to establish a triable issue of material fact

The Weirs offered no other evidence to create a triable issue of material fact. They needed to demonstrate a triable issue as to whether Travelers should have paid them additional policy benefits. However, the Weirs did not include their own declarations or any other evidence suggesting that Travelers' original estimate was inadequate. The Weirs introduced no evidence indicating that the damage to their property in 1994 was more extensive than Travelers acknowledged. Other than the Vaughan declaration, they did not introduce evidence to show that the cost of repairing or replacing the 1994 damage exceeded the dwelling policy deductible, or surpassed the estimate and payment

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[11] The Weirs argue that because Travelers' counsel's declaration in support of the summary judgment motion attached the Vaughan report as a document the Weirs produced in the course of the litigation, Travelers could not object to the estimate. This argument is unavailing. First, Travelers did not attach Vaughan's *declaration*, which was the subject of its written objections. Second, the estimate, standing alone, simply listed proposed repairs to the Weir property without any explanation, analysis, or comparison to the original insurance estimate. Even if Travelers was estopped from objecting to the estimate, it would not create a triable issue of material fact. Regardless of whether Travelers could object to the report after including it in its moving papers, on appeal we must independently determine the effect of the evidence submitted. (*Cheviot Vista*, *supra*, 143 Cal.App.4th at p. 1500, fn. 9.)

under the other structures coverage.[12] The Hurst declaration relied completely on the Vaughan declaration in assuming Travelers owed the Weirs additional policy benefits. The few facts introduced by counsel's declaration dealt with Travelers' conduct after the Weirs filed suit. The interrogatory responses merely summarized the contents of the claim file and repeated Vaughan's lists of missing components without any additional explanation. Thus, the Weirs did not establish a triable issue existed as to Travelers' alleged failure to meet its contractual obligations.

Because Travelers satisfied its initial burden of establishing it did not breach the insurance policy in 1994, and the Weirs failed to create a triable issue of material fact on that claim, the bad faith cause of action also failed. (*Lincoln*, *supra*, 136 Cal.App.4th at p. 1008; *Cheviot Vista*, *supra*, 143 Cal.App.4th at p. 1497; *1231 Euclid*, *supra*, 135 Cal.App.4th at p. 1021.) "Absent [the] contractual right [to insurance policy benefits,] the implied covenant has nothing upon which to act as a supplement, and 'should not be endowed with an existence independent of its contractual underpinnings.' [Citation.]" (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 36 (*Waller*); *Everett v. State Farm General Ins. Co.* (2008) 162 Cal.App.4th 649, 663; *Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1151 ["Where benefits are withheld for proper cause, there is no breach of the implied covenant"].)[13]

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12 Even though Travelers arguably did not take the chimney report into consideration before concluding that the damage would not exceed the Weirs' deductible, the Weirs' own consultants estimated the chimney repair costs at $8,475. Even if accepted as true, this amount would not have caused the original estimate to exceed, or come close to exceeding, the $33,000 deductible.

13 We note that the Weirs argue summary judgment was inappropriate because Travelers offered no evidence to disprove the claim that it violated various Department of Insurance (DOI) regulations. However, violations of Insurance Code section 790.03, subdivision (h), or the related DOI regulations alone do not create a private right of action. (*City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 488-489, citing *Spray, Gould & Bowers v. Associated Internat. Ins. Co.* (1999) 71 Cal.App.4th 1260, 1271, and *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287.) Evidence that an insurance company has violated DOI regulations may support an inference that the insurer acted unreasonably or in bad faith, but, as explained above, that

Brehm v. 21st Century Ins. Co. (2008) 166 Cal.App.4th 1225 (*Brehm*), which the Weirs cite in their reply, does not require a different result. In *Brehm*, the plaintiff alleged that prior to eventually paying policy benefits, the insurer failed to make a reasonable effort to resolve his claim and retained biased experts to evaluate the plaintiff's injuries. (*Brehm*, *supra*, at pp. 1232-1233.) The trial court sustained a demurrer on the ground that the plaintiff could not successfully argue a breach of contract claim, therefore his clam for breach of the implied covenant also failed. On appeal, the court cited *Waller* among other authorities, and concluded that despite the absence of an express breach of contract, the plaintiff's allegations of delayed payment of policy benefits, and the insurer's failure to accept a reasonable settlement offer, were sufficient to state a claim for breach of the implied covenant. (*Brehm*, *supra*, at pp. 1236-1237.)

This case is markedly different from *Brehm*. In *Brehm*, the alleged acts of bad faith occurred while the insurer actually owed policy benefits. Here, the Weirs never raised a triable issue that Travelers delayed payment of policy benefits, failed to accept a reasonable settlement offer when benefits were due, or engaged in oppressive conduct prior to payment. The Weirs focus much of their argument on Travelers' actions after litigation began in 2002, eight years after Travelers had resolved the claim without any protest or counteroffer from the Weirs. But they raised no triable issue that any additional policy benefits were owed in 2002. The bad faith claim could not withstand summary judgment. (Cf. *Waller*, *supra*, 11 Cal.4th at p. 36 [when benefits are due an insured, activities that frustrate the insured's right to receive benefits may breach the implied covenant]; *Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720 [" 'When the insurer unreasonably and in bad faith withholds payment of the claim of its insured, it is subject to liability in tort' "].)

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claim failed here. (See *Safeco Ins. Co. of America v. Parks* (2009) 170 Cal.App.4th 992, 1006; *Rattan v. United Services Auto Assn.* (2000) 84 Cal.App.4th 715, 724.)

II. The Motion to Tax Costs

In March 2007, Travelers filed a verified memorandum of costs. Attached to the memorandum was an itemized list of the claimed costs, including fees associated with filing motions using an online system ordered by the trial court (electronic filing fees), messenger and fax filing fees, and various travel expenses incurred by Travelers' Northern California counsel. The Weirs filed a motion to tax costs in which they argued that Travelers was not entitled to travel costs, messenger fees, or electronic filing fees. The Weirs contended that messengers should not always be necessary for court filings, and that Travelers alone should bear the costs of hiring out-of-town counsel. The trial court granted Travelers its requested costs, ruling: "The items are proper on their face and plaintiff has failed to show that the charges were not reasonable or necessary." The Weirs filed a second appeal to challenge the costs order.

Code of Civil Procedure section 1033.5, subdivision (c)(2) " 'codified existing case law and set forth the items of costs which may or may not be recoverable in a civil action. [Citation.]' [Citation.] An item not specifically allowable under subdivision (a) nor prohibited under subdivision (b) may nevertheless be recoverable in the discretion of the court if 'reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.' " (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 773-774.)

The Weirs fail to make any reasoned legal argument that the trial court abused its discretion in awarding Travelers its requested costs. After first asserting that travel expenses are not allowable under Code of Civil Procedure section 1033.5, the Weirs then cite *Thon v. Thompson* (1994) 29 Cal.App.4th 1546, for the proposition that the court in its discretion *may* in fact allow certain travel costs. However, they then contend: "the method by which Defendants have attempted to procure this cost is deceptive and inappropriate at the very least, and should be excluded on this reason alone." The Weirs do not explain this statement. Their remaining argument consists of rhetorical questions—i.e., "[W]hy are messengers always necessary?"—and statements they do not support with argument or citations to legal authority. This is not sufficient to challenge

the issue on appeal. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citation.]" (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

DISPOSITION

The judgment and post-judgment order are affirmed. Respondent is to recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BIGELOW, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.